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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 20th September 1955

S.R.O. 2108.—Whereas the election of Shri Bhagwant Singh as a member of the Legislative Assembly of the State of PEPSU, from the Bhadson constituency has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Gurbhajnrik Singh Mann son of S. Gurkirpal Singh, Moti Bagh, Nabha and S. Dhandhar Singh son of S. Sapuran Singh resident of Village Uda, Tahsil Nabha, District Patiala;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, PATIALA

Nawal Kishore,—*Chairman.*

Dalip Singh,—*Member.*

Krishna Sahai,—*Member.*

ELECTION PETITION No. 21 OF 1954

1. S. Gurbhajnrik Singh son of S. Gurkirpal Singh, Moti Bagh, Nabha,
2. S. Dhandhar Singh son of S. Sapuran Singh resident of village Uda, Tahsil Nabha, District. Patiala.—*Petitioners.*

Versus

- (1) S. Bhagwant Singh son of Partap Singh, House No. 353 Bedian Street, Nabha Patiala District.
- (2) S. Amrik Singh, Retired Inspector of Police, V. Dhangi, Tahsil, Nabha, Patiala District.
- (3) Faqirla son of Phumni, Village Lasara (Lakhubas) P.O. Lasoi, P. S. Payal, Tahsil Nabha Patiala District.
- (4) Kaka Ram son of Siri Ram village & P.O. Bhadson District Patiala.
- (5) Sardar Singh son of Ralla Singh Village Tarheri Kalan, P.O. Chanarthal Kalan, District Patiala.
- (6) Nauhar Chand son of L. Ram Parshad, Village & P.O. Amlah Patiala District.
- (7) S. Teja Singh son of S. Sadhu Singh V. Dittupur P.O. Chanarthal Kalan at present c/o PEPSU P.S.P Office, Sheranwala Gate, Patiala

- (8) General S. Shivdev Singh son of S. Partap Singh of Nabha at present Development Minister, PEPSU Government, Patiala.
- (9) L. Mathura Dass Advocate, son of Sh. Banta Mall V. & P.O. Amloh, Patiala District.
- (10) Maharani Gurucharan Kaur, Malwa House, Civil Lines, Patiala at present No. 1, Constitution House, New Delhi.
- (11) Bhagwan Dass son of L. Kishori Lal Village & P.O. Bhadson, Patiala District.—*Respondents.*

ORDER DELIVERED ON 15TH SEPTEMBER, 1955

This Judgment will dispose of petition No. 21 of 1954 which has arisen out of elections held in 1954 in the Bhadson Constituency.

Out of twelve candidates who originally stood for election, General Shivdev Singh, Shri Mathra Das and Maharani Gurcharan Kaur withdrew from the contest; while the nomination papers of S. Gurbhajn Singh and Shri Bhagwan Dass were rejected by the Returning Officer on the ground that Form 5-A relating to the appointment of election agent had not been filed with the nomination papers. Accordingly only seven candidates actually contested the election. The polling took place on 28th February 1954 and S. Bhagwant Singh was declared as having been duly elected.

Gurbhajn Singh has presented this petition, challenging the election of Bhagwant Singh on the ground that the order of the Returning Officer was illegal and improper, as under the law delivery of Form 5-A with the nomination paper was not essential. It was averred that since the electorate had been deprived of the right to vote for the petitioner, the result of the election had been materially affected and the election of Bhagwant Singh Respondent No. 1 was wholly void. Gurbhajn Singh joined with him (Dhandhar Singh), an elector in the Constituency and this petition was filed by both of them jointly.

On 17th November, 1954 an application for withdrawal was presented by both Gurbhajn Singh and Dhandhar Singh, but Dhandhar Singh, after explaining the circumstances in which he had joined in the application, stated that he wanted to pursue the Election Petition and was not agreeable to its withdrawal. Gurbhajn Singh having expressed his inability to continue the petitioner, Dhandhar Singh became the sole petitioner and has pursued the petition in his own name.

The reply of respondent No. 1, the only contesting respondent consists of a typically non-committal prolix and extremely vague and rambling written statement. Nothing has been stated clearly and on every crucial point want of knowledge has been pleaded. Supplementary portion of the written statement, consisting as it does, of utterly useless and irrelevant details, had better not come into existence. It was pleaded that the respondent did not know whether Dhandhar Singh was an elector in the constituency, and as regards the appointment of the election agent, it was alleged that the respondent could not state whether Gurprit Singh had been appointed according to rules and an offer was made to file an additional written statement which, it may be pointed out, was not presented at any later stage. The order rejecting the nomination paper was stated to be correct and in conformity with law and it was pleaded that the rejection of the nomination paper had not resulted in the election having been materially affected. Even as regards the security deposit, it was alleged that the respondent did not know which of the two petitioners had made it and what would be its effect on the maintainability of the petition. It was stated that an additional written statement would be filed after inspection of the original Treasury receipt and the challan forms.

The following issues were framed:—

- (1) Is petitioner No. 2 (S. Dhandhar Singh) not an elector of Bhadson Constituency and, therefore, not entitled to join petitioner No. 1 in the petition? O.R.
- (2) Whether the appointment of S. Gurprit Singh as his election agent was duly made as required by Section 40 of the Act? O.P.
- (3) Whether rejection of the nomination paper on the ground that the petitioner had not delivered the acceptance of his election agent in Form 5-A along with the nomination paper was illegal, improper and without jurisdiction? O.P.

- (4) If Issue No. 2 is decided in favour of the petitioner, whether the fact that the petitioner produced before the Returning Officer, at the time of the scrutiny, Form 5-A duly completed and signed amount to a substantial compliance with the law? O.P.
- (5) Whether the fact that the acceptance of the election agent was not filed with the nomination paper was merely a technical defect and not one of a substantial character? O.P.
- (6) Whether the result of the election was materially affected if the rejection of the nomination paper was illegal, improper and without jurisdiction? O.P.
- (7) Whether the security deposit was made by either of the two petitioners? O.P.
- (8) Relief

Issue No. 1 was given up by Shri D. K. Puri, counsel for respondent No. 1 by his statement dated 18th May, 1955. He clarified the position as regards the appointment of the election agent in this statement by alleging that Gurprit Singh had not been appointed as election agent before the delivery of the nomination paper and that accordingly the nomination paper should have been rejected on this ground. This point was already covered by issue No. 2. Issue No. 7 has not been pressed.

Issue No. 2.—The crucial point in this petition is whether Gurbhajn Singh, had appointed Gurprit Singh as his election agent in Form 5-A before the delivery of the nomination paper on 9th January, 1954, as required by Section 40 of Act 43 of 1951. The burden of proving this pure question of fact lay heavily on the petitioner, who has produced 27 witnesses in all, though only P.W. 26 makes a direct and forthright statement on this question, while the statements of P.Ws. 3, 4, 5, 6, 8 and 27 furnished useful information, though not directly in point. The statements of other witnesses produced by him are relevant only in connection with the result of the election having been materially affected which is the subject matter of issue No. 3. The petitioner himself no doubt stated that Gurbhajn Singh had appointed Gurprit Singh, his real brother, as his election agent before the delivery of the nomination paper to the Returning Officer. The statement, however, has no value, as he admitted that he was introduced to Gurbhajn Singh two months before the filing of the Election petition and had no personal knowledge even as regards the time when the nomination paper was filed up and presented by him to the Returning Officer. P.W. 26 Kaka Ram is respondent 4 and accordingly his presence in the office of the Returning Officer on the date of the scrutiny admits of no doubt whatever. He deposed in the examination-in-chief that till the date of the scrutiny Gurbhajn Singh had not appointed an election agent and that he was actually appointed on that day. This statement was adverse to the petitioner's case and yet the witness was not treated as hostile and subjected to cross-examination. The respondent's counsel, on the other hand, elicited in his cross-examination the further fact that after the Returning Officer had asked Gurbhajn Singh why Form 5-A had not been attached with the nomination paper, he went out, filled up the form and then produced it before the Returning Officer. This statement is against the interests of the witness himself, for if the election is set aside which would not be possible, if he is believed, he would have an opportunity of seeking election again. We see no reason whatsoever why he should not be believed, particularly as the petitioner's learned counsel has not said a word against it. P.W. 3 Maghar Singh is the proposer and P.W. 5 Hans Raj is the seconder of Gurbhajn Singh's nomination paper. There is some conflict between them as regards the place where the nomination paper was filled up and signed. According to P.W. 3 it was filled up and signed at Patiala while P.W. 5 shifts the scene to Nabha. They are however agreed on the broad fact that they as well as P.W. 4 Dalip Singh and P.W. 6 Chet Singh were brought to the court compound at Patiala. The statements of P.W. 4 and 6 are also to the same effect. P.W. 3 further deposed that Gurprit Singh was not there and no such paper was written that day in which he and Gurbhajn Singh may have signed. These witnesses are of no help so far as actual appointment of election agent is concerned, but they stand out in bold relief to and contradict the statement of Court witness, Gurbhajn Singh. We will discuss this aspect later, while appraising the value of the statement of the Court witness. Reference may also be made to the statement of P.W. 27 Jagir Singh, according to whom Form 5-A was not with Gurbhajn Singh on 9th January, 1954 and was produced by him on 13th January, 1954. In cross-examination he stated that Form 5-A was not filled up on 9th January, 1954 at the time he filled up the nomination paper. The statement of P.W. 8 Joginder Singh, who is the only other witness

who has something to say on the point, shows that he did not see Gurprit Singh in the Court or outside either on the 9th or 13th January, 1954.

The above evidence is all against the petitioner and we do not wonder that the counsel appearing on his behalf stated that he did not rely upon it. Naturally he would not, as it does not support him at all and on the contrary proves that the appointment of the election agent had not been made before the delivery of the nomination paper. After the petitioner had closed his evidence, we summoned Gurbhajn Singh as a Court witness, as in our opinion he was the most important witness on the point in question, but could not be examined, as in spite of the best efforts made by the petitioner, he had failed to have service effected upon him. His statement has, however, given a complete somersault to the statements of the petitioner's witnesses. According to him Form 5-A came into existence at the same time as the nomination papers and Gurprit Singh appended his signatures that very day. The proposers and seconders were brought to him on 8th January 1954 and he secured their signatures at Nabha. He then brought the blank nomination papers to Patiala on 9th January 1954 and filled them up at the house of Shri Gian Singh Rarewala. At the time his brother Gurprit Singh and S. Isher Singh Mardan Pleader were also there. Form 5-A was also filled by him at the house of Shri Gian Singh Rarewala on 9th January, 1954. Now this version on its face is quite different from that of the witnesses produced by the petitioner and is in fact contradicted by them. P.W. 3 had stated that nomination paper had been filled up outside the office of the Returning Officer while according to P.Ws. 5 and 6 this had been done either at Patiala or Nabha. It was never the petitioner's case that the nomination papers as well as Form 5-A had been filled up and signed at the house of S. Gian Singh Rarewala. The statement of Gurbhajn Singh could have been easily got corroborated by the statements of S. Gian Singh Rarewala or S. Isher Singh Mardan, but none of them has been produced. P.Ws. 3 and 4 his proposer and seconder have stated that they and P.Ws. 5 and 6 were brought to Patiala and further that Gurprit Singh was not there. They do not mention in their statements as having gone or been taken to the house of S. Gian Singh Rarewala. Further if it was true that Form 5-A had come into existence on 9th January 1954, it is very likely that it would have been produced the very day the nomination papers were filed.

We have held in Election Petition No. 7 of 1954, "Gurdial Singh, Vs. Shrimati Man Mohan Kaur" decided on 16th April 1955 that it was not at all necessary in law to file Form 5-A with the nomination paper, but that it was necessary and also sufficient that it should be in existence at or before the time of the delivery of the nomination paper we have held in this very judgment that the appointment of the election agent must be proved to have been made in writing in Form 5-A before the delivery of the nomination paper. Now if Form 5-A was in existence at the time of the delivery of the nomination paper, it is, by itself the best proof of the appointment of the election agent. Though, according to the view taken by us, its non-production along with the nomination paper will not entail a rejection of the latter, if, however, it is produced, it will at once allay all suspicions and objections regarding the validity of the nomination paper on the score of non-appointment of the election agent. There were twelve candidates in this case and all of them filed Form 5-A with the nomination paper, except Gurbhajn Singh and another. Why should Gurbhajn Singh withhold it? It may well have been due to the fact that it had not yet come into existence. Further if the version now set up by him in his statement was true, he would have incorporated it in his application dated 16th January, 1954. This was the earliest opportunity he had of laying his cards on the table. He, in our opinion, was compelled to make the present statement, as he could not possibly go behind Form 5-A which bore 9th January, 1954 as the date of its execution under his signature. On the face of it he is undoubtedly a highly interested witness as the petition was originally filed by him along with Dhandhar Singh and his interest or zeal does not seem to have abated because of his withdrawal. Besides, it is after all the statement of one party against that of another and un-corroborated and contradicted as it is, it is not entitled to greater significance or weight. Thus the petitioner on whom lay a heavy burden has completely failed to discharge it and a case for setting aside the election has not been made out at all. The learned counsel for the petitioner, as stated already relied solely upon the statement of the court witness and requested us to discard the testimony of R.Ws. 2, 3, and 4 who had been produced by the respondent in rebuttal, as Gurbhajn Singh was not cross-examined as regards the presence of these witnesses. The learned counsel for the respondent has relied upon the statement of R.W. 2, Om Parkash Jand who was a candidate from Nabha and happened to be present outside the office of the Returning Officer, Patiala, both on 9th January 1954 and 13th January, 1954 when there was a discussion between Gurbhajn Singh and Respondent No. 1 and the former said, it was not necessary to file Form 5-A and he had not

filled it. On 18th January, 1954 however he took a Form from S. Isher Singh Mardan and after filling it up took it inside the Office of the Returning Officer. The witness also took a Form from him and after filling it up presented it to the Returning Officer but his nomination paper was also rejected. Now there can be no doubt whatsoever about the presence of the witness on 9th January, 1954 and 13th January, 1954 and we feel what he is stating is the truth, as he is corroborated by P.W. 26 referred to already R.W. 7 Shri Harbhagwan Singh Advocate has also supported this version. We might before closing refer to another aspect of the statement of the court witness. There appears to the naked eye a clear difference in the pen and ink of the nomination paper and Form 5-A. Accordingly a number of questions were put in order to discover whether they had been written with different pens. His answer to all these questions was evasive. He stated that he did not remember whether he and his brother signed with the same pen or different pens or whether the pen used by the proposers and seconders for appending the signatures on the nomination papers and by the witness for filling up the forms was the same. To us the only possible explanation appears to be that the nomination paper and Form 5-A were not filled up and signed the same day or at the same time. Except the statement of Gurbhajanik Singh, the rest of the evidence leaves no doubt whatsoever that Form 5-A had not come into existence on 9th January, 1954, the crucial date in the case.

We may point out in the end that the learned counsel for the petitioner also contended that the respondent had no clear case and had been shifting it from time to time, as, he argued, was clear from the answers given by the petitioner's witnesses in cross-examination. It is true that while P.Ws. 4, 5 and 6 stated that the nomination papers had been filled up at Nabha according to P.W. 3 they had been filled up at Patiala. This discrepancy amongst the petitioner's witnesses on a point which is not material in the case is not sufficient to support the contention that the respondent had been shifting his case. The respondent's case is to be found in the statement made by him and there seems to be no doubt about it. In any case even if the respondent had no clear case and had not been able to establish it, the petitioner cannot take advantage of his weakness and must stand or fall by his own evidence. That evidence, as stated already, supports the respondent. Accordingly we must hold that the petitioner has completely failed to discharge the heavy burden which lay upon him. Issue No. 2 is, in the view taken by us, decided against the petitioner.

Issue No. 3.—We had, as stated already, decided in another case referred to above that rejection of the nomination paper on the ground that the petitioner had not delivered form 5-A with the nomination paper was illegal and improper. But we have also held that it must be established that declaration about the appointment of the election agent in the nomination paper was not one sided and fictitious and further that it had come into existence in writing in Form 5-A at or before the delivery of the nomination paper. If, however, it is not so established the nomination paper must be held to be invalid and was liable to be rejected on this ground. Such is the case here. The petitioner having failed to establish that Gurprit Singh's appointment as election agent had come into existence on 9th January, 1954 at or before the delivery of the nomination paper to the Returning Officer, the nomination paper should have been rejected by him on this ground.

The result is that we uphold and support the order of the Returning Officer, though on a different ground. Issue No. 3 is decided against the petitioner.

Issues Nos. 4, 5 and 6.—Issues Nos. 4, 5 and 6 do not directly arise in the case and are not pressed and in view of our finding on Issue No. 3, the question of the result of the election having been affected does not arise.

Issue No. 8.—This petition fails and is dismissed with costs. We hereby assess the costs at Rs. 200 to be paid by Dhandhar Singh to Respondent No. 1.

(Sd.) NAWAL KISHOR, *Chairman.*

(Sd.) DALIP SINGH, *Member.*

(Sd.) KRISHNA SAHAI, *Member.*

[No. 82/21/54/11110.]

By Order,

P. S. SUBRAMANIAN, *Secy.*

